IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 672 of 2001.

Reserved on: 30.8.2007.

Decided on: 05.09.2007.

Proprietor, White Heaven Tea Estate. … … Petitioner.

Versus

Ashok Kumar Awasthi and Others. … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the Petitioner: **Pt. Om Parkash Sharma, Advocate.**

For Respondent No.1: **Mr. Virender Rathore, Advocate.**

Rajiv Sharma, Judge:

A challenge has been laid to the award passed by the H.P. Labour Court, Shimla, dated 12.6.2001 in reference No.141 of 1996.

The brief facts necessary for the adjudication of this petition are that the State Government had made a reference to the H.P. Labour Court, Shimla with regard to retrenchment of the respondent (hereinafter referred to as the workman) from the service on 30th December, 1994. In sequel to the reference made by the State Government, the workman had filed the statement of claim before the Labour Court. He had primarily contended before the Labour Court that he had continuously worked with the Management w.e.f. 1984 till

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[1] *Whether reporters of local papers may be allowed to see the judgment? No.*

30th December, 1994 and was retrenched without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The Management had resisted the claim by filing detailed reply. The Labour Court on the basis of the evidence led by the parties had answered the reference in affirmative by directing the re-instatement of the workman with continuity and seniority of service. He was also held entitled to back wages of 30% of his last pay drawn till he was re-instated.

Pt. Om Parkash Sharma had strenuously argued that the workman had not completed 240 days preceding his retrenchment on 30th December, 1994 and was thus not entitled to any relief by the Labour Court. Mr. Virender Rathore had supported the award dated 12.6.2001.

I have heard the learned counsel for the parties and perused the record.

The workman was engaged as Munshi in the year 1984. He continuously discharged his duties from 1984 till 30th April, 1994 and thereafter for a short duration he worked with Koul Tea Estate from 1st May, 1994 to 14th June, 1994 and thereafter again started working with the petitioner-employer with effect from 15th June, 1994 to 31st December, 1994. The workman had appeared as PW-1 before the Labour Court and had testified that he was not given any retrenchment compensation at the time of his retrenchment and he was getting salary of Rs.1500/- per month. He had further stated that he worked for short duration with Koul Tea Estate with effect from 1.5.1994 to 14.6.1994 and thereafter re-joined his duties with the employer-Management with effect from 15th June, 1994 onwards. Mr. Nirwan Singh appeared on behalf of the Management as RW-1. He had denied that any retrenchment compensation was due to the workman.

He also admitted that he gave no retrenchment notice, but gave the pay in lieu of notice and all benefits.

The workman remained absent for one and a half months with effect from 1.5.1994 to 14.6.1994 and by excluding this period also, the workman had completed 240 days in a block of 12 calendar months preceding his retrenchment on 30th December, 1994. The workman has not been paid any retrenchment compensation as required under Section 25-F of the Act. Pt. Om Parkash Sharma had strenuously argued that the workman had accepted a sum of Rs.7,000/- vide Annexure P-10 on 28th December, 1994 towards retrenchment compensation. The employer had not tendered Annexure P-10 as evidence before the Labour Court. What has been produced before the Labour Court is Annexure P-11. The workman has only been paid salary, gratuity, bonus leave and pay in lieu of notice amounting to Rs.11,435/- as per Annexure P-11. The workman had continuously worked with the employer for 11 years and was entitled to compensation for rendering continuous service.

The employer had not substantiated the plea that the workman has abandoned his job. The right of the workman to get relief could not be denied to him for the simple reason that M/s Surya Trading Company has taken the unit on lease. The lease was executed during the pendency of the dispute before the Labour Court. The workman had categorically stated in his examination-in-chief that he was not gainfully employed anywhere after his retrenchment and was looking after his small holding in his native village which was not sufficient to make two ends meet.

The findings recorded by the Labour Court are based on facts and records and are liable to be up-held. There is neither any

jurisdictional error nor any procedural irregularity in the award dated 12.6.2001 and the same is up-held.

Accordingly, the writ petition is dismissed. The interim relief dated 13.9.2001 is vacated. There shall be no order as to costs.

(Rajiv Sharma) Judge.

September 05, 2007.
(sck)